

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

In re Student and Chester Academy
Case No.S8 FY-10-12-004

HEARING OFFICER'S RECOMMENDATION ON
CHESTER SCHOOL BOARD'S MOTION TO DISMISS

Background

On December 7, 2009, Parent faxed an appeal to the State Board of a denial by the Chester School Board (hereinafter Chester Board) of a request for certain corrective measures following an incident in which Student was "tapped," "flicked" or "hit" on the back of the head by a teacher in response to disobedience in Science class. Instead, the Chester Board chose to take different corrective actions. Parent seeks review of a decision of the Chester Board of Education dated November 5, 2009, following the Science class incident of October 23, 2009.

At the pre-hearing conference on January 7, 2010, School District submitted a Motion to Dismiss. Parent answered by letter of January 25, 2010.

Discussion

At or before the meeting with the Chester Board on November 4, 1009, Parent had asked that: 1. The teacher have no contact with Student. 2. The teacher not approach Student at all during the school day. 3. The teacher not be in any classroom when Student is present. 4. The teacher not teach Student's Science class. 5. The School hire a replacement Science teacher to teach Student's class (CB Ex A).

In its decision letter dated November 5, 2009 (CB Ex B), the School District responded with its choices of action: 1. A case manager would be assigned to Student's Science class to observe the teacher's interactions with Student and others. 2. Teacher would continue teaching the class but any discipline of Student would be conducted in the presence of the case manager. 3. The case manager would make daily reports to the Special Education Director on the teacher's interactions with Student and Parent and the Principal would be kept informed. 4. Student would have access to guidance services and to members of the administration should he have any concerns. 5. Transition from a case manager to a paraprofessional with a goal of eliminating monitoring would occur as soon as possible.

On December 14, 2009, Parent forwarded an amended request that listed additional issues and relief including training in behavior management and counseling for the teacher and an apology from the teacher. These new matters were not before the Chester Board on November 4, when it heard the Parent's request.

The State Board has the same powers of management, supervision, and direction over public schools as directors have over a business. RSA 186:5. It shall be the duty of the school districts and their employees to comply with the rules and regulations of the State Board. RSA 186:8 gives the State Board rulemaking authority and suggests areas in which rules are to be made, including such threshold matters as certification and qualification of teachers. Statute does not direct the State School Board to oversee and create regulations on the day to day workings of schools such as the day to day discipline of teachers.

The duties of the State Board are enumerated in RSA 21-N:II. Specifically, RSA 21-N:II, III, gives statutory power to the State Board of Education to hear individual appeals from local school board decisions. That preliminary review may be by a hearing officer is under RSA 186:10-a. An agency's hearing procedures are to comply with the Administrative Procedure Act, RSA 541-A, and with educational statutes and rules. All must be grounded in statute and in rules promulgated as Ed Rules 200 et seq.

In filing its Motion to Dismiss, the Chester Board asserts a lack of jurisdiction over the matter as pled by the Parent, there being no claim of a specific violation of law. Instead, the Parent expressed a strong desire that the matter of correction of the teacher be handled differently. The basis of Parent's choices appears to be the well-being of the child. The basis of the Chester Board's decisions appears to be the benefit of the school, the students as a whole while trying to address the needs of the individual. The Parent appears *pro se*, and some leeway is generally given in such a case. However, a basic requirement that cannot be overlooked is a statement of a cause of action for which relief can be granted, grounded in law and regulation.

When reviewing a Motion to Dismiss, the facts presented are to be taken as true and viewed in the light most favorable to the appellant. From that perspective, a wrong has been admitted and actions were taken by the School Board. If it were found that the School District's actions in response were as they are stated by the parent and as given in the decision letter of November 4, 2010, still it is not claimed that a statutory violation has been committed by the Chester Board in rendering its decision. Whether one personally disagrees with the Chester Board and agrees with the Parent's suggested remedies, in this case, the Parent's claim cannot prevail. There is no legal basis cited to review the Chester Board's decision and to substitute the Parent's remedies for those of the Chester Board.

Recommendation

For the reasons given above, it is recommended that the State Board deny the Parent's amendment adding to her proposal for remedies, submitted after the Chester School Board's decision was rendered, and grant the Chester School Board's Motion to Dismiss the Parent's claim.

February 5, 2010
Signed and Dated

Gail C. Morrison, Hearing Officer